Supreme Court, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1996

NO. _____

GARTH LEE OWENS,

Petitioner,

vs.

US DEPARTMENT OF INTERIOR,

Respondent.

PETITION FOR WRIT OF CERTIORARI

FROM THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

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54 pp

QUESTIONS PRESENTED FOR REVIEW

1. Whether the assignments by the Petitioner's ancestors to their land patents earned by virtue of their service in the United States Army during the Mexican American War were null an void, thus entitling Petitioner to claim them.

2. Whether the United States government satisfied its obligation to award land to the Petitioner's ancestors earned during service in the Mexican American War when the veterans or their heirs at law did not locate the land as required by the Act awarding Land Bounty Warrants to Veterans, Chap. VIII, 9 Stat. 123 (1847)

IN THE

SUPREME COURT OF THE UNITED STATES

GARTH LEE OWENS,

Petitioner,

VS.

US DEPARTMENT OF INTERIOR,

Respondent.

List of All Parties

Counsel of record for Petitioner, certifies that the following persons or entities are parties to this proceedings:

1. Garth Lee Owens, Petitioner, and

2. Unites States Department of the Interior

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OFFICIAL OPINIONS OF OTHER COURTS IN THIS CASE

There are no published opinions in connection with the proceedings in this case.

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1996

GARTH LEE OWENS,

Petitioner,

vs.

US DEPARTMENT OF INTERIOR,

Respondent.

PETITION FOR WRIT OF CERTIORARI

The Petitioner, Garth Lee Owens, respectfully prays that a writ of certiorari issue to review a judgment of the United States Court of Appeals for the Fifth Circuit entered in the above entitled proceedings on January 28, 1997, which had jurisdiction of this case under 28 U.S.C. §1291.

This Court has jurisdiction of this

case because the decision by the United States Court of Appeals for the Fifth Circuit entered on January 28, 1997, is incorrect inasmuch as the court did not correctly apply a federal statute to the facts, and it should not be allowed to stand.

This Court has jurisdiction and should grant this writ and exercise its supervisory powers to correct this decision of the lower courts.

OPINIONS BELOW

The dates of those judgments and opinions are as follows:

a. Summary judgment was entered against Petitioner denying all recovery by the United States District Court of the Northern District of Texas on May 7, 1996. (Appendix A)

b. The judgment and opinion of the United States Court of Appeals for the

Fifth Circuit affirmed the judgment of the United States District Court on January 28, 1997, in an unpublished memorandum. (Appendix B)

The statutory provision of this Court to review the judgment of the Fifth Circuit by a Petition for Writ of Certiorari is invoked under 28 U.S.C. §1254(1).

STATUTES INVOLVED

The constitutional provisions, treaties, statutes, ordinances and regulations involved in this case are as follows:

a) An Act to raise for limited time an Additional Miliary Force, Chap. VIII, 9 Stat. 123 (1847) which provided that there shall be raised under the direction of the President for the war with Mexico " one regiment of dragoons and nine regiments of infantry..." and which further provided that each officer or private "who has served or may serve during the present war with Mexico shall be entitled to receive a certificate or warrant from the war department for the quantity of one hundred and sixty acres, and which may be located by the warrantee or his heirs at law at any land office of the United States, in one body, and in conformity to the legal

subdivisions of the public lands..."

b) The Act recodifying the Act to raise for a limited time an Additional Miliary Force as Revised Statutes of the United States 2418, 18 Stat. 443 (1874) which authorized the issuance of a land warrant to a veteran of the Mexican War who served not less than twelve months and received an honorable discharge or discharge before the expiration of his tour of duty as a consequence of wounds received during his military service.

c) 18 Stat. Part 1, page 447, 2441, 2456. Appendix C

STATEMENT OF THE CASE

Petitioner, Garth Lee Owens, hereinafter referred to as Owens, is the great grandson of Andrew Jackson Owen and great grandnephew of William Carroll Owen. Both ancestors fought in the war with Mexico. They were honorably discharged on November 9, 1847 by reason of surgeons' certificates of disability.

Andrew Jackson Owen and William Carroll Owen earned land warrants from the United States for serving in the army during the Mexican War. On their way home to Nashville, Tennessee, from the war, they stopped in New Orleans. There, before the land warrants were issued, they signed an "x" to a document addressed to the Commissioner of Pensions requesting that if after examining "the enclosed proofs," the Commissioner found A. J. Owens and W. C. Owens entitled to bounty

land, he forward them to D.I. Ricardo in New Orleans.

Approximately four months later the War Department issued land Warrant No. 12468 in the name of William C. Owens dated March 17, 1848, and land Warrant No. 12469 in the name of Andrew J. Owens dated March 17, 1848. On March 30th, 1848, both men allegedly marked their "X" on documents authorizing one Mills Judson as their attorney in fact to sell and assign said Warrants. These documents, bearing the signatures of two witnesses and a notary were allegedly signed in New Orleans.

In a document dated one day later the said Judson acting as agent and attorney in fact sold and assigned William C. Owens' Warrant to William Menzie. That document contains a statement that Menzie is locating land in satisfaction of the

William C. Owens' Warrant. Likewise, documents bearing the same date were prepared purporting to assign Andrew J. Owens' Warrant to Resolved E. Day, saying he is locating land in satisfaction of A. J.'s warrant. Both documents bear signatures of witnesses and a notary.

On January 1, 1849, the General Land Office issued a patent to William Menzie and a year later to Resolved E. Day. Both gave detailed land descriptions to land at Green Bay, Wisconsin.

Years later in 1858, when petitioning for a disability pension, A. J. Owen said that on his way home he sold his claim for a land warrant to attorney in fact Judson and delivered his certificate of discharge to him. That delivery of discharge was confirmed by his brother.

In November 1886 the other brother applied for his veteran's pension and said

he sold his discharge papers in New Orleans on the way home from the Mexican War. Neither brother received land from the United States for their service in the Army during the Mexican war.

STATEMENT OF JURISDICTION IN THE FEDERAL DISTRICT COURT

Suit was filed in U.S. District Court as a civil case pursuant to the Federal Declaratory Judgments Act. The District Court had jurisdiction under 28 U.S.C. Section 1331 and 28 U.S.C. Section 1346.

REASONS FOR GRANTING THE WRIT

A. COURT OF APPEALS FAILED TO APPLY CORRECT STANDARD OF REVIEW

In reviewing a summary judgment, the Appellate Court applies the same standard as the District Court, asking whether there is any genuine issue of material fact and whether the Respondent was entitled to judgment as a matter of law. *Bache v. American Telephone and Telegraph,* 840 F.2d 283, 287 (5th Cir. 1988) *cert. den.* 488 U.S. 888, 109 S. Ct. 219, (1988); *Brooks, Tarleton, Gilbert, Douglas, & Kessler v. United States Fire Insurance Company,* 832 F.2d 1358, 1364 (5th Cir. 1987); *Reed v. State Farm Mutual Automobile Insurance Company,* 784 F.2d 577, 578 (5th Cir. 1986); *McCrae v. Hankins,* 720 F.2d 863, 865 (5th Cir. 1983); *Bank of Commerce of Laredo v. City National Bank of Laredo,* 484 F.2d 284, 289

(5th Cir. 1973) *cert. den.* 416 U.S. 905, 94 S. Ct 1609 (1974). Summary judgment must be reversed if any genuine issue of material fact is found to have existed. *Poller v. Columbia Broadcasting System,* 368 U.S. 464, 467, 82 S. Ct. 486, 488 (1962); *Demandre v. Liberty Mutual Insurance Company,* 264 F.2d 70, 72 (5th Cir. 1959)

In reviewing the case, the inference that is drawn from the underlying facts must be viewed in a light most favorable to the party opposing the motion. *United States v. Diebold, Inc.,* 369 U.S. 654, 655, 82 S. Ct. 993, 994, (1962); *John v. State of Louisiana (Board of Trustees for State Colleges and Universities),* 757 F.2d 698, 703 (5th Cir. 1985); *Simon v. United States,* 711 F.2d 740, 743 (5th Cir. 1983); *National Hygienics, Inc. v. Southern Farm Bureau Life Insurance Co.,* 707 F.2nd 183,

186 (5th Cir. 1983)

Because the Appellate Courts are authorized to review final judgments only, denials of summary judgments are ordinarily not appealable. 28 U.S.C. §1291 "However, when an appeal from the denial of summary judgment is raised in tandem with an appeal of an order granting a cross-motion for summary judgment, we have jurisdiction to review the propriety of the denial of summary judgment by the District Court." *Sacred Heart Medical Center v. Sullivan*, 958 F.2d 537, 543 (3rd Cir. 1992). Granting of summary judgment in favor of one party may be incorrect and the denial of a cross motion should be reviewed to determine whether there is grounds for granting judgment in favor of the Petitioner. *Stroehmann Bakeries, Inc. v. Local 776 International Brotherhood of Teamsters*, 969 F.2d 1436, 1440 (3rd. Cir.

1992) *cert. den.* ____U.S._____, 113 S. Ct. 660, (1992); *Joplin v. Bais*, 631 F.2d. 1235, 1237 (5th Cir. 1980). Both Motions are before the Court. It must decide (1) if there is a material issue of fact; and (2) is one party entitled to judgment as a matter of law. *International Union, United Mine Workers of America v. Racho Trucking Co.*, 897 F.2d 1248, 1252 (3rd Cir. 1990) The Court of Appeals for the Fifth Circuit failed to apply this standard of review.

B. THE ASSIGNMENTS OF THE DISCHARGE PAPERS WERE NULL AND VOID.

On May 13, 1846, the United States Congress declared war on Mexico. 9 Stat. 9 To wage the war, Congress authorized a call of 50,000 soldiers. Id at P. 9 Later, Congress passed legislation awarding land bounty warrants to veterans of that war. An Act to raise for a limited Time an additional military force, and for

other Purposes, Chapter VIII, 9 Stat. 123 (1847) This Act was partially recodified as Revised Statutes of the United States § 2418, 18 Stat. 443 (1874) The purpose of the Act was to "induce men to enter the armed services and to encourage the settlement of public lands." *Alcea Band of Tillamooks v. United States,* 87 F. Supp. 938, 945 (Ct. Cl. 1950) rev'd 341 U.S. 48, 71 S. Ct. 552 (1951)

The Act provided that any private who received an honorable discharge or who is discharged because of war injuries shall receive " a certificate or warrant from the war department for the quantity of one hundred and sixty acres" 9 Stat. 123, 125 The land was to be located "by the warrantee or his heirs at law at any land office of the United States. Id. at p. 125 (emphasis added) The veteran could choose any public lands and "upon return of the

certificate or warrant" along with evidence of the legal location of the land to the General Land Office, a patent would be issued to him. Id. at p. 125 The statute went on to provide that "all sales, mortgages, powers or other instrument in writing, going to affect the title or claim to any such bounty made or executed prior to the issue of such warrant or certificate, shall be null and void to all intents and purposes whatsoever." Id at p 125 (emphasis added) This would include all assignments of rights or possession. Any such sale or assignment is "null and void." The Act also protects the warrants from payment of debts or claims incurred by the soldiers prior to issuance. Id. at p. 125

The starting point for interpreting a statute is the language contained therein. *Albernaz v. United States*, 450 U.S. 333,

336, 101 S. Ct. 1137, 1141 (1981) Once Congress has spoken it is the duty of the courts to say what the law is. *Diamond v. Chakrabarty,* 447 U.S. 303, 315, 100 S. Ct. 2204, 2211 (1980); *Sutter v. Goe,* 687 F.2d 197, 201 (7th Cir. 1982) The purpose of a statute may be gleaned from the legislative scheme by which the general purpose of the act is to be carried out. *United States v. Katz,* 271 U.S. 354, 357, 46 S. Ct. 513, 514 (1926)

Where the legislative purpose is expressed in plain and unambiguous language, the duty of the courts is to give it effect according to its terms. *Andrus v. Sierra Club,* 442 U.S. 347, 356, 99 S. Ct. 2335, 2340 (1979); *United States v. Lexington Mill & Elevator Company,* 232 U.S. 399, 409, 34 S. Ct. 337, 340 (1914) Courts must give statutes their "natural and plain meaning." *National Life and*

Accident Insurance Co. v. United States, 524 F.2d 559, 560 (6th Cir. 1975) And "where a statute plainly expresses the will of Congress in language that does not permit or require a strained interpretation, words thereof may not be distorted beyond their plain popular meaning." *Adams v. Morton,* 581 F.2d 1314, 1320 (9th Cir. 1978) The Court of Appeals for the Fifth Circuit has ignored both the content and spirit of the Act awarding veterans of the Mexican American War land for their valuable and courageous service.

Null and void means "that which binds no one; that which is incapable of giving rise to any rights or obligations under any circumstances; that which is of no effect." *Zogby v. State,* 279 N.Y.S. 2d 665, 668 (Ct. Cl., N.Y., 1967) *Cf. Burns Mortgage Co. v. Schwartz,* 72 F. 2d 991 (3rd Cir. 1934)

The sale of these military papers had no legal effect. The documents allegedly signed by the Owen brothers on November 25, 1847, were null and void. Delivery of possession of the warrants pursuant to those documents would not transfer the rights of the Owen brothers.

The transaction which initiated this chain of events was void from the beginning and the resulting transaction had no validity as to the rights of the Owen brothers. The defect in this chain began with those November 25, 1847, documents. D. I. Ricardo, the notary on the March 30th, 1848, assignments was the person to whom the warrants were to be delivered in the former documents. Both were allegedly signed in New Orleans. W. C. Owen said he conveyed his right of possession to his "Discharge at New Orleans, Louisiana on my return home."

That transaction was four months before the warrant was fraudulently issued and notarized by Ricardo. The law says that this transaction is of no force and effect. 9 Stat. 125 As a result, the United States has not delivered warrants to the Owens due them for their service in the Mexican war. Patents for these warrants should now issue to Petitioner, Garth Lee Owens.

C. THE OBLIGATION OF THE U.S. GOVERNMENT TO PETITIONER'S ANCESTORS WAS NOT SATISFIED BY THE PATENTS ISSUED IN 1849 AND 1850

The War Department did not comply with the Act of 1847 when issuing the patents with the certificates of Andrew J. Owen and William C. Owen. The patents could not issue to anyone except the veteran because the land had to be located by the warrantee or his heirs at law. 9

Stat. 125 Attorneys in fact or agents are not included and not eligible to exercise the warrants and locate the land.

The language of the Act, which is clear, concise and free of ambiguity, was for the protection of the war veteran who had risked his life for his country. Its intent is easily derived by reading it in its entirety. *Conroy v. Aniskoff,* _____ U.S. _____, 113 S. Ct. 1562, 1565 (1992) Unscrupulous solicitors and con artists were known to try to defraud these veterans of their benefits. Its plan was to protect the very situation presented by the facts of this case. Those protections are substantially the same today. 38 U.S.C. §5301 According to the United States Constitution, Congress has the authority and the power to go to war and raise debt.(U. S. Constitution, Art. I, Section 8) The validity of national

public debt is not questioned. Under the Constitution, the two land certificates or warrants of the ancestors of the Petitioners are lawful war debts and the issuance of two 160 acre land patents constitute payment of these obligations. The patents issued to Menzie and Day do not fulfill this obligation of the United States to the ancestors of Petitioner Owens. Those warrants or certificates should now issue to Petitioner to satisfy or pay that obligation.

CONCLUSION

The trial court erred in granting a summary judgment in favor of the United States. That judgment should be reversed and a declaratory judgment entered in favor of Petitioner based on the following undisputed facts:

1. William Carroll Owen and Andrew Jackson Owen were veterans of the Mexican-

American War who each served in the military in excess of twelve(12) months;

2. William Carroll Owen and Andrew Jackson Owen were each entitled to the issue of a warrant for a patent for 160 acres of land in accordance with an Act of Congress approved on the 11th day of February, 1847, entitled An Act to Raise for a Limited Time an Additional Military Force, and for other Purposes;

3. On March 17, 1848, Land Warrants numbers 12468 and 12469 were issued in the names of William C. Owens and Andrew J. Owens, but neither William Carroll Owen nor Andrew Jackson Owen were issued a patent to 160 acres of land to which each of them was entitled;

4. Petitioner, Garth Lee Owens, is the great grand-nephew of William Carroll Owen and the great grandson of Andrew Jackson Owen and is entitled to the

issuance of a patent on two 160 acre tracts of land by the United States Department of Interior or other applicable governmental authority;

5. Petitioner recover his costs and attorney's fees.

RESPECTFULLY SUBMITTED,

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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF TEXAS

DALLAS DIVISION

GARTH LEE OWENS,

Plaintiff,

v. No. 3:95-CV-0492-T

UNITED STATES OF AMERICA
DEPARTMENT OF INTERIOR,

Defendant.

ORDER DENYING PLANTIFF'S
MOTION FOR SUMMARY JUDGMENT
AND
GRANTING DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT

Before the Court are Plaintiff's Motion for Summary Judgment and Defendant's Motion for Summary Judgment. The motions are

opposed. Defendant filed a response to Plaintiff's motion, and the parties announced at the pretrial conference held May 3, 1996, that no additional responses or replies would be filed. After considering the motions, the Court is of the opinion that Plaintiff's should be denied and Defendant's granted.

In his second amended complain, filed March 19, 1996, Plaintiff Garth Lee Owens brings a claim against Defendant United States (Department of Interior) under the Declatory Judgments Act. He seeks a declaration regarding his rights under the Act of February 11, 1847. This act provides for the issuance of military land bounty warrants to certain veterans of the war between the United States and Mexico.

Owens moves for summary judgment declaring that the government improperly issued land patents to which his ancestors were entitled and that he is entitled to the patents. The government moves for summary judgment on the ground that Owens is barred from bringing his claim because his failure to comply with subsequent acts regarding military land bounty warrants.

Summary judgment should be entered only where the record establishes that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. FED. R. CIV. P. 56(c). The movant bears the burden of establishing the propriety of summary judgment. Fontenot v. Upjohn Co., 780 F.2d 1190, 1994 (5th Cir. 1986).

Once a properly supported motion for summary judgment is made, the adverse party must set forth specific facts showing that there is a genuine issue for trial. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250 (1986). The substantive law will identify what facts are material. Id. at 248. A dispute as to a material fact is "genuine" only if the evidence is such that a reasonable jury could return a verdict for the nonmoving party. Id. At 248.

The parties stipulate to the following facts in both their motions and the joint pretrial order.

Section 9 of the Act of February 11, 1847, 9 Stat. 125, provided to certain wounded veterans of the war between the United States and Mexico the right to

receive a certificate or warrant from the War Department for 160 acres of available public land. 9 Stat. 125; Alcea Band of Tillamooks v. United States, 87 F. Supp. 938, 944 (Ct. Cl. 1950). Such a warrant entitled the veteran to locate 160 acres of available public land and provide the General Land Office with the warrant and proof that the land had been legally located. Upon a proper showing, the General Land Office was to issue a patent for the 160 acres of land.

Owens is the great grandson of Andrew Jackson Owen and the great grandnephew of William Carrol Owen. Andrew Jackson Owen and William Carrol Owen were brothers and veterans of the war. They qualified for land patents under the Act of February 11, 1847.

On March 17, 1848, the War Department "issued" a land warrant to each brother. They delivered the warrants to B. Clements, and on March 30, 1848, each signed a document authorizing Mills Judson to sell and assign his land warrant. The next day, Judson sold and assigned the land warrants to Resolved E. Day and William Menzie.

The General Land Office issued a land patent to Menzie as the assignee of William Carrol Owen on January 1, 1849. Likewise, the General Land Office issued a land patent to Day as the assignee of Andrew Jackson Owen on January 1, 1850.

In October, 1988, Andrew Jackson Owen petitioned the government for a veteran's disability pension. In the petition, he stated that on his way home he sold his

claim for a land warrant to Judson in New Orleans. In November, 1886, William Carrol Owen petitioned for a veteran's pension and stated that he had sold his discharge in New Orleans on the way home from the war. Although the parties do not explain the significance of selling a discharge, a discharge is apparently required to receive a land patent.

Owens contends that a land patent may only be issued to a qualifying veteran or his legal heirs and that no assignment or sale of a land warrant was valid if it occurred before the issuance of the land patent. For the first proposition, Owens relies on language from section 9 of the Act of February 11, 1847 which provides that qualifying veterans are entitled to receive

a land warrant, "which may be located by the warrantee, or his heirs at law." For the second proposition, he relies on the provision of section 9 that all sales, mortgages, powers, or other instruments affecting the title or claim to any a bounty right made before the issuance of the warrant is null and void, and that no claim of bounty shall be affected by or subject to the payment of any debt or claim incurred by the soldier before the issuance of the warrant.

It is undisputed that no land warrant was issued to either William Carrol Owen or Andrew Jackson Owen. Owens contends that the assignments or sales of their warrants to Day or Menzie are void. Moreover, he contends that the government engaged in

affirmative misconduct in issuing the patents to Day and Menzie because they were not the Owens brothers.[1] He argues that he is entitled to issuance of new patents under the Act.

In contrast, the government first argues that the land warrants were properly issued to Menzie and Day. The government contends that the assignments executed by the brothers are not void under section 9 of the Act of February 11, 1847. Section 9 provides that any instrument going to affect the title or claim to a bounty is null and void if it is executed before the issuance of the warrant and not before the issuance

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[1]Plaintiff's Motion for Summary Judgment, at 8-9 (Apr. 3, 1996).

of the patent, as Owens contends. The Owens brothers executed the written assignments of the warrants 13 days after the issuance of the warrants. Thus, the government effectively contends that its subsequent issuance of the patents to the assignees was valid.

In addition, the government contends that Owens has not properly preserved his claim under the Recordation Act, 69 Stat. 534,[2] and the Act of July 27, 1962, 76 Stat. 246.[3] The Recordation Act required any owner

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[2]See generally Santa Fe Pacific R.R. Co. v. Secretary of Interior, 830 F.2d 1168, 1174-76 (D.C. Cir. 1987) (discussing other aspects of the Recordation Act).

[3]The Act of July 27, 1962, Pub. L. No. 87-558, 1962 U.S.C.C.A.N. (76 Stat.) 301.

of or person claiming rights to a military land bounty warrant to present his claim for recordation by the Department of Interior within two years of the effective date of the act. The Act of July 27, 1962, repealed the Act of February 11, 1847, and established a procedure for settling claims which had been recorded under the Recordation Act. It authorized the Secretary of the Interior to purchase all valid and unsatisfied military land bounty warrants from persons who had properly recorded their claims. The government points out that no evidence indicates that either William Carrol Owen or Andrew Jackson Owen complied with the Recordation Act. Thus, it argues that Owens is barred from bringing his claim.

Owens argues that the government should be equitably estopped from asserting the defense provided by the Recordation Act and the Act of July 27, 1962, because of what he argues is the government's affirmative misconduct. He contends that the government acted improperly by issuing the land patents based on the warrants of the Owens brothers to persons other than the Owens. He argues that the legislative intent behind the Act of February 11, 1847, was to insure that qualifying veterans or their legal heirs received land patents. He also seems to contend that veterans could not assign their land warrants at all. He reasons that had Congress intended for veterans to have been able to assign their warrants it would have

provided an assignment clause in the statute.

Owens is barred from bringing his claim because of his failure to comply with the Recordation Act and the Act of July 27, 1962. These statutes provided persons who had claims to military land bounty warrants with a means of settling those claims. Owens fails to present any evidence that either he or any legal heir of William Carrol Owen or Andrew Jackson Owen complied with the settlement procedures.

Owen's argument concerning equitable estoppel is unavailing. Even assuming the government acted improperly at all, Owen fails to show that any improper action should give rise to estoppel. The Owens brothers were qualified veterans, and the

government issued them warrants. The brothers assigned, for unspecified value, their warrants to men who later applied for and received the corresponding land warrants.[4] The Act of February 11, 1847, rendered void an alienation of a land warrant only if it was executed before the issuance of the warrant. The Owens brothers assigned their warrants 13 days after their issuance. Even if an unspecified Congressional intent were able to overcome the plain language of the Act of February 11, 1847, the act of the Owens brothers in assigning their land warrants would prevent

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[4] Also, Owens fails to present any evidence that Day and Menzie, the ultimate recipients of the land warrants, were not qualifying veterans in their own right.

the Court form equitably estopping the government from asserting the requirements of the Recordation Act and the Act of July 27, 1962. No evidence indicates that the assignments were anything other than completely voluntary and for valuable consideration.

In summary, Owens is barred from bringing his claim because of his failure to comply with the Recordation Act and the Act of July 27, 1962. Thus, his summary judgment motion is denied and the government's granted.

It is therefore **ORDERED** that Plaintiff's Motion for Summary Judgment, filed April 3, 1996, is **denied**.

It is **FURTHER ORDERED** that Defendant's Motion for Summary Judgment, filed April 5,

1996, is **granted**. Plaintiff Garth Lee Owens has no valid claim to the rights or claims of Andrew Jackson Owen or William Carrol Owen to military land bounty warrants or patents under the Act of February 11, 1847.

Signed this 4th day of May, 1996.

/s/ ROBERT B. MALONEY
Robert B. Maloney
U.S. District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

GARTH LEE OWENS,

Plaintiff,

v. No. 3:95-CV-0492-T

UNITED STATES OF AMERICA
DEPARTMENT OF INTERIOR,

Defendant.

FINAL DECLARATORY JUDGMENT

This action came before the Court, Honorable Robert B. Maloney, presiding, and the issues having been duly considered and a decision having been rendered:

It is **ORDERED** and **ADJUDGED** that Plaintiff Garth Lee Owens has no valid claim to the rights or claims of Andrew Jackson Owen or William Carrol Owen to military land

bounty warrants or patents under the Act of February 11, 1847.

It is **FURTHER ORDERED** and **ADJUDGED** that all relief not specifically granted herein is denied.

Signed this 4th day of May, 1996.

/s/ ROBERT B. MALONEY
Robert B. Maloney
U.S. District Judge

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 96-10674
Summary Calendar

GARTH LEE OWENS,

Plaintiff-Appellant,

versus

US DEPT OF INTERIOR,

Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Texas
(3:95-CV-492-T)

Before JONES, DeMOSS, and PARKER, Circuit Judges.

APPENDIX B

PER CURIAM:*

The court has considered appellant's position in light of the briefs and pertinent portions of the record. Having done so, we find no reversible error of fact or law and affirm for essentially the reasons stated by the district court.

AFFIRMED.

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* Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

SECTION 2441. of the Revised Statutes of the United States, 18 Stat., part 1 page 447, provides that "Whenever it appears that any certificate or warrant, issued in pursuance of any law granting bounty-land, has been lost or destroyed, whether the same has been sold and assigned by the warrantee or not, the Secretary of the Interior is required to cause a new certificate or warrant of like tenor to be issued in lieu thereof; which new certificate or warrant may be assigned, located, and patented in like manner as other certificates or warrants for bounty-land are now authorized by law to be assigned, located, and patented; and in all cases where warrants have been, or may be, re-issued, the original warrant, in whoseever hands it may be, shall be deemed and held to be null and void, and the assignment thereof, if any there be,

fraudulent: and no patent shall ever issue for any land located therewith, unless such presumption of fraud in the assignment be removed by due proof that the same was executed by the warrantee in good faith and for valuable consideration." (23 June, 1860 and 20 June, 1874).

SECTION 2456. provides-

"Where patents have been already issued on entries which are confirmed by the officers who are constituted the board of adjudication, the Commissioner of the General Land-office, upon the canceling of the outstanding patent, is authorized to issue a new patent, on such confirmation, to the person who made the entry, his heirs or assigns."

(3 March, 1853).